

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
ROCHESTER

2005 JUL 12 PM 2:00

IN RE ATTICA STATE EMPLOYEES
VICTIMS' COMPENSATION FUND

AMENDED ORDER

05-MISC CV. 6017T

This Order, and Schedule A attached hereto, are amended for the sole purpose of correcting the spelling of some of the claimants' names and, in all other respects, the Order and Certification issued by this Court on July 12, 2005 remain unchanged.

On April 12, 2005, the New York State Legislature passed New York State Assembly Bill 6840 which established the Attica State Employee Victims' Fund. The stated purpose of the fund is to compensate State employees or their distributees for injuries suffered by State employees during the 1971 riot at Attica State Prison ("Attica"), in Attica, New York, and the subsequent retaking of the prison by State forces on September 13, 1971. The legislation establishes a \$12 million fund which is to be funded with annual appropriations of \$2 million over the course of six years. The entirety of the fund is to be distributed to injured State employees or their distributees. No attorneys' fees may be awarded from the fund.

The Act provides that the fund is to be allocated among the qualified claimants by an Administrator appointed by the Governor after consultation with the Assembly, Senate, and representatives of eligible claimants. On May 2, 2005, I accepted the appointment

by Governor George Pataki to administer the fund without compensation.

As Administrator of the Victims' Fund, and in accordance with the legislative authority establishing the fund, the following constitutes my findings and conclusions, determining the allocation of the \$12 million fund among the eligible claimants.

I. Eligible Claimants

The three groups of eligible claimants, defined by the legislation are as follows:

1. Distributees of any correction officer or state civilian employee who died as a result of injuries sustained during the uprising or retaking of Attica between September 9 and September 13, 1971;
2. Any current or former correction officer or state civilian employee, so employed as of the dates of the uprising or retaking, who was physically attacked, held hostage, or detained by inmates during the riot between Sept. 9, 1971 and Sept. 13, 1971, even if released prior to the retaking of the prison by state forces, or the distributees of such an employee if that employee is now deceased;
3. Any current or former correction officer or state civilian employee, so employed as of the dates of the uprising or retaking, or any current or former New York State Police employee, so employed at the time of the riot or retaking, who was shot during the retaking of Attica correctional facility by state forces on September 13, 1971 or the distributees of said employee if that employee is now deceased.

Applying this criteria, I find that each person who submitted a verified claim (as listed in Schedule A attached to this Order) qualifies as an eligible claimant under the Victims' Fund legislation.

II. Determination of compensable injuries and claimant Subclasses

In determining the allocation of the \$12 million fund, I am strictly guided by the Victims' Fund legislation, which provides that injured persons be compensated on the basis of the severity of the injuries they suffered.¹ Accordingly, although it is clear that the families of those guards and employees who were killed or injured during the riot and retaking have suffered immeasurably, the law requires that I limit my inquiry into the nature and severity of the injuries sustained by the injured party, and make allocations based solely on those factors. This formula in no way minimizes the suffering of the families of those persons who were injured or killed during those five days in September, 1971. Although the injuries received varied among the class members, the suffering of the family survivors was universal and impossible to quantify.

¹ "(c) Moneys of [the] fund shall be distributed pursuant to this section to the state employee victims and survivors of deceased state employee victims as recompense for the pain, suffering and torment endured by those victims during the course of the uprising and retaking." Section 99-m State Finance Law as amended April 12, 2005 (emphasis added).

In making these findings, and as directed by the legislation creating the Victims' Fund, I reviewed the verified claim forms submitted by the claimants and their distributees together with the report, research, and documentation regarding the Attica riots compiled by the Attica Task Force created in March of 2001.

The legislation also requires that once I have determined the nature and severity of the injuries sustained by each class member, I am then required to group those class members who suffered similar injuries into one of an appropriate number of subclasses, and make an identical award to each member of that subclass. Specifically, the legislation provides that:

the administrator shall place each identified state-employee victim (living or deceased) into one of an appropriate number of broad subclasses to be identified by the administrator, such subclasses to be defined according to the nature and severity of the injuries suffered. Each identified state-employee victim . . . within a subclass shall receive the identical monetary award

Having reviewed all of the verified claims, and pursuant to my legislative mandate, I find that the class members shall be grouped into six subclasses, each subclass defined as follows:

Category I

Category I includes (1) those persons who died as a result of injuries inflicted by inmates, and (2) those persons who were mortally wounded during the retaking on September 13, 1971, and who

suffered conscious pain and suffering for a period of 20 or more days.

Category II

Category II includes all persons who were either killed instantly during the retaking on September 13, 1971 or died no more than 19 days thereafter from those injuries.

Category III

Category III includes those persons who were severely, but not fatally wounded, as a result of injuries sustained during the retaking on September 13, 1971. For purposes of this subclass, a "severe" injury is one that required hospitalization for 20 or more consecutive days during the period between September 13 and December 13, 1971, or which resulted in brain damage.

Category IV

Category IV includes those persons who were taken hostage for at least some period during September 9 through September 13, 1971, or persons who participated in the retaking of Attica Prison and who, as a result of beatings received from inmates or injuries sustained from gunfire, received permanent physical injuries that resulted in a complete or partial physical disability.

Category V

Category V includes those persons who were taken hostage for at least some period during September 9 through September 13, 1971 and who received significant injuries as a result of gunfire or beatings received from inmates.

Category VI

Category VI includes all remaining persons who were held hostage for any period of time during the riot.

III. Subclass Categorization of each eligible injured party

I find, based on the nature and severity of the injuries suffered by those persons who were killed or injured during the Attica riot and/or retaking of the prison, that they shall be placed in the following categories:*

Category I:

William Quinn
Harrison William Whalen

Category II:

Edward Cunningham
John D'Arcangelo
Elmer Hardie
Richard Lewis
John Monteleone
Carl Valone
Elon Werner
Ronald Werner

Category III:

Frederick Miller
Michael Smith

Category IV:

Joseph Christian
James Clute
Robert Curtiss
Elmer Huehn
Kenneth Jennings
Frank Kline
Gordon Knickerbocker
Donald Melven
Edward Miller
Royal Morgan
Paul Rosecrans
Arthur James Smith
Robert VanBuren
Philip Watkins

Category V:

Raymond Bogart
Roger Dawson
Richard Delany
Richard Fargo
Donald Head
Gordon Kelsey
Ronald Kozlowski
Allen Mitzel
Anthony Prave
Anthony Sangiacomo
John Stockholm
Franklin Wald
Dean Wright
Walter Zymowski

Category VI:

Donald Almeter
Lynn Johnson II
Paul Krotz
Larry Lyons
Gerald Reger
Albert Robbins
Eugene Smith
Dean Stenshorn
Frank Strollo
Gary Walker

IV. Monetary Award to Members of Each Subclass

Having determined the appropriate subclasses, and the members of each subclass, I am required to make an identical monetary award to the members of each subclass. The State has allocated \$12 million to be divided among the eligible claimants. In 2000, however, two claimants (the Harrison William Whalen family and the Richard Lewis family) elected to receive a \$55,000 payment from the State, and therefore, the State will deduct \$55,000 from any award made to those claimants in this Order. Section 99-m, 3(c) State Finance Law as amended April 12, 2005.

I find that based on the nature and severity of the injuries suffered by the injured guards and State employees, the fund shall be allocated as follows:

Category I:	\$550,000 for each injured party
Category II:	\$500,000 for each injured party
Category III:	\$380,000 for each injured party
Category IV:	\$225,000 for each injured party
Category V:	\$150,000 for each injured party
Category VI:	\$100,000 for each injured party.


Schedule A, attached to this Order, is a Certification to the Comptroller for the State of New York of the payment and distribution plan to the eligible claimants. The plan provides that, in accordance with the legislative direction, each eligible claimant shall be paid over the course of six years. In short, each eligible claimant will receive one sixth of his or her share of the award each year for six years. For deceased class members, payments have been allocated to distributees listed in Schedule A pursuant to Section 4.1-1 of the New York State Estate Powers and Trusts Law. No interest shall be payable to any claimant from the fund. The award made to each claimant is based on the injured person's pain and suffering, and accordingly, is exempt from state and federal taxation.²

² For State tax exemption, see Section 99-m, ¶4, State Finance Law as amended April 12, 2005 ("All payments received pursuant to this section, whether by judgment or compromise and settlement, shall be exempt from all taxation."); for Federal tax exemption, see 26 U.S.C. §104(a)(2).

CONCLUSION

Hopefully, the survivors and their families of the Attica riots of 1971 will no longer feel "forgotten" and that those who suffered and continue to suffer will feel some measure of comfort at least from the fact, that the matter is concluded and some measure of justice was served.

ALL OF THE ABOVE IS SO ORDERED.


MICHAEL A. TELESKA
United States District Judge

Dated: Rochester, New York
July 13, 2005

AMENDED Schedule A
Certification

I hereby certify to the Comptroller of the State of New York that the State Employee Victims' Fund shall be distributed to each eligible claimant as set forth below, payable over a six year period, commencing in fiscal year 2005-2006 (See New York State Assembly Bill 6840, Section 1). **This represents an amendment to correct the spelling of some of the claimants' names and, in all other respects (including the amounts), this Certification remains the same as the Certification issued on July 12, 2005.**

Injured Party	Claimant	Claimant's Share of the Fund
Donald Almeter (Category VI)	Self	\$100,000
Raymond Bogart (Category V)	Self	\$150,000
Joseph Christian (Category IV)	Self	\$225,000
James Clute (Category IV)	Self	\$225,000
Edward Cunningham (Category II)	James Cunningham (son) Thomas Cunningham(son) Edward M. Cunningham(son) Ellen Osiecki (daughter) Mark Cunningham (son) Robert Cunningham (son) Gary Cunningham (son) John Cunningham (son)	\$62,500 \$62,500 \$62,500 \$62,500 \$62,500 \$62,500 \$62,500 \$62,500
Robert Curtiss, Sr. (Category IV)	Robert Curtiss, Jr. (son) Susan Curtiss Montgomery (daughter) John Curtiss (son)	\$75,000 \$75,000 \$75,000

Injured Party	Claimant	Claimant's Share of the Fund
John D'Arcangelo (Category II)	Julie Ann Delaney (daughter) Ann Driscoll (wife)	\$225,000 \$275,000
Richard Delany (Category V)	Self	\$150,000
Roger Dawson (Category V)	Self	\$150,000
Richard Fargo (Category V)	June Fargo (wife) Susan Parmelee (daughter) Thomas Fargo (son) Cynthia Mellen (daughter)	\$100,000 \$16,666.67 \$16,666.67 \$16,666.67
Elmer Hardie (Category II)	Mary Ellen Van Son (daughter) William Elmer Hardie (son) Donna Hardie Fay (daughter) Nicholas George Hardie (son) Judith Veronica Hardie (daughter) Sue A. Hardie Townsend (daughter) James Hardie (son) Robert Hardie (son)	\$62,500 \$62,500 \$62,500 \$62,500 \$62,500 \$62,500 \$62,500 \$62,500 \$62,500
Donald Head (Category V)	Kathleen Head (wife) Holly Head (daughter) Marianne Head (daughter) Abigail Head (daughter) Karen Head (daughter) Donald Head, Jr. (son) Michael Head (son) Johnathan Head (son)	\$100,000.00 \$ 7,142.85 \$ 7,142.85 \$ 7,142.85 \$ 7,142.85 \$ 7,142.85 \$ 7,142.85 \$ 7,142.85
Elmer Huehn (Category IV)	Self	\$225,000

Injured Party	Claimant	Claimant's Share of the Fund
Kenneth Jennings (Category IV)	Self	\$225,000
Lynn Johnson, II (Category VI)	Self	\$100,000
Gordon Kelsey (Category V)	Self	\$150,000
Frank Kline (Category IV)	Henry Kline (brother) Thomas Kline (nephew) Diane Koller (niece) Susan Sylvester (niece) Mary Ellen Mozingo (niece) Robert Kline (nephew)	\$56,250 \$28,125 \$28,125 \$28,125 \$28,125 \$56,250
Gordon Knickerbocker (Category IV)	Jerry Hays Madison (son) Thomas J. Knickerbocker (son) Robert G. Knickerbocker (son) Sandra Merkle (daughter)	\$56,250 \$56,250 \$56,250 \$56,250
Ronald Kozlowski (Category V)	Self	\$150,000
Paul Krotz (Category VI)	Paula M. Krotz (wife) Karen P. Strothmann (daughter) Kenneth J. Krotz (son) Stacy Marie Bolles (granddaughter) Paul A. Krotz (grandson)	\$75,000 \$8,333.33 \$8,333.33 \$4,166.67 \$4,166.67

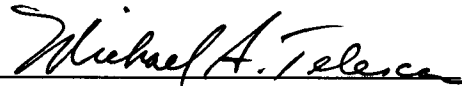
Injured Party	Claimant	Claimant's Share of the Fund
*Richard J. Lewis (Category II)	Patricia B. Howe (daughter) David Forster Lewis (son)	\$250,000 \$250,000
Larry Lyons (Category VI)	Self	\$100,000
Donald Melven (Category IV)	Self	\$225,000
Edward Miller (Category IV)	Helen Miller (wife) Betty J. Powers (daughter)	\$137,500 \$87,500
Frederick Miller (Category III)	Self	\$380,000
Allen Mitzel (Category V)	Vernice Mitzel (wife) Donald Mitzel (son) Beverly Myers (daughter) Robert Mitzel (son)	\$100,000 \$16,666.67 \$16,666.67 \$16,666.67
John Monteleone (Category II)	Ardith Bookmiller (wife) Kentt Monteleone (son) Kerry Cianciola (daughter) Keith Monteleone (son) Karen Jellison (daughter) Karol Quartley (daughter)	\$275,000 \$45,000 \$45,000 \$45,000 \$45,000 \$45,000
Royal Morgan (Category IV)	Self	\$225,000

*The Richard J. Lewis Family elected to received \$55,000 from the State of New York in 2000, and therefore this award should be reduced to \$445,000 pursuant Section 99-m 3(c) of the State Finance Law as Amended April 12, 2005.

Injured Party	Claimant	Claimant's Share of the Fund
Anthony Prave (Category V)	Self	\$150,000
William Quinn (Category I)	Nancy Newton (wife)	\$300,000
	Deanne Quinn Miller (daughter)	\$83,333.33
	Christine Quinn-Schrader (daughter)	\$83,333.33
	Amy Miller (daughter)	\$83,333.33
Gerald Reger (Category VI)	Thomas Reger (nephew)	\$11,111.11
	Ronald Reger (nephew)	\$11,111.11
	Dona Hazen (niece)	\$11,111.11
	Gerald Reger (nephew)	\$11,111.11
	Cheryl Connors (niece)	\$11,111.11
	Paul Reger (niece)	\$11,111.11
	Elizabeth Mitchell (niece)	\$11,111.11
	Patricia Franschilli (niece)	\$11,111.11
	James Reger (nephew)	\$11,111.11
Albert Robbins (Category VI)	Self	\$100,000
Paul Rosecrans (Category IV)	Self	\$225,000
Anthony Sangiacomo (Category V)	Gertrude Sangiacomo (wife)	\$100,000
	Cynthia Adrian (daughter)	\$50,000
Arthur James Smith (Category IV)	Alan Smith (son)	\$75,000
	Sherry Knowle (daughter)	\$75,000
	Vickie Menz (daughter)	\$75,000
Eugene Smith (Category VI)	Self	\$100,000
Michael Smith (Category III)	Self	\$380,000

Injured Party	Claimant	Claimant's Share of the Fund
Dean Stenshorn (Category VI)	Self	\$100,000
John Stockholm (Category V)	Self	\$150,000
Frank Strollo (Category VI)	Self	\$100,000
Carl Valone (Category II)	Ann Valone (wife) Mary Ann Valone (daughter) Kathryn Valone (daughter) James Valone (son) Carl Valone, III (son)	\$275,000 \$56,250 \$56,250 \$56,250 \$56,250
Robert Van Buren (Category IV)	Self	\$225,000
Franklin Wald (Category V)	Evelyn Wald (wife) Carole Butler (daughter) Timothy Rutherford (grandson) Mark Hall (grandson) Sandra Diehl (granddaughter)	\$100,000 \$25,000 \$8,333.33 \$8,333.33 \$8,333.33
Gary Walker (Category VI)	Self	\$100,000
Philip Watkins (Category IV)	Self	\$225,000
Elon Werner (Category II)	Sandra Balzhiser (daughter) Wayne Werner (son)	\$250,000 \$250,000

Injured Party	Claimant	Claimant's Share of the Fund
Ronald Werner (Category II)	Theresa Leach (daughter)	\$166,666.67
	Rhonda Attaway (daughter)	\$166,666.67
	Rachel Stagg (granddaughter)	\$83,333.33
	Franklin Stagg (grandson)	\$83,333.33
*Harrison William Whalen (Category I)	Colleen Whalen Spatola (daughter)	\$275,000
	Coreen Whalen Henning (daughter)	\$275,000
Dean Wright (Category V)	Self	\$150,000
Walter Zymowski (Category V)	Self	\$150,000


 MICHAEL A. TELESCA
 United States District Judge

Dated: July 13, 2005
 Rochester, New York

*The Harrison William Whalen Family elected to received \$55,000 from the State of New York in 2000, and therefore this award should be reduced to \$495,000 pursuant Section 99-m 3(c) of the State Finance Law as Amended April 12, 2005.